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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Plumas)

Estate of MARK LAMAR WHITNEY, Deceased.

SHIRLEY WHITNEY,

Plaintiff and Appellant,

v.

ALICE KING, as Personal Representative,
etc.,

Defendant and Respondent.

C060528

(Super. Ct. Nos. 6263
& 27877)

Following a contested hearing, the probate court denied the claims of appellant Shirley Whitney against the estate of her ex-husband Mark Whitney (the decedent) for amounts she claimed were owed to her under a 1995 entry of judgment in the Whitneys' marital dissolution action. Whitney argues there was insufficient evidence to support the judgment.

Although we conclude the probate court made two mistakes that were reflected in its ruling, we find that notwithstanding these mistakes, there was sufficient evidence to support the judgment. Specifically, the trial court mistakenly believed Whitney received a greater percentage of the sale proceeds of an office building than she actually received, and mistakenly credited as testimony a statement made by the estate's attorney. Nevertheless, the inferences drawn by the court from the circumstances surrounding the sale of the office building and the distribution of the sales proceeds were reasonable, and those inferences together with the probate court's determinations regarding credibility are sufficient to support the judgment. We shall therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In June 1995, Whitney and the decedent entered into a stipulated judgment of dissolution. As is relevant to this matter, the parties agreed that Whitney would receive a one-half interest in a medical office building, a one-half interest in "the gold coins," a one-half interest in "the Medical Office Equipment," and a one-half interest in "the Accounts Receivables of said medical practice." Pursuant to the stipulated judgment, the parties agreed that the value of the medical office building was \$210,000, the value of the gold coins was \$20,000, the value of the office equipment was \$17,125, and the value of the accounts receivable was \$48,000.

In 2001, Whitney and the decedent sold the medical office building, including fixtures and equipment for \$205,000. The

closing statement designated \$1,000 for the fixtures and equipment, and \$204,000 for the real estate. The decedent received \$79,566.86 from the sale of the property, and Whitney received \$124,166.87. The additional payment in the amount of \$22,300 to Whitney was itemized in the escrow instructions as follows:

"OFFICE SUPPLIES AND EQUIPMENT	\$1,000.00
ACCOUNTS RECEIVABLES	\$19,500.00
ATTORNEYS FEES	\$1,800.00"

Shortly after the closing, Whitney's attorney sent a letter to the decedent's attorney, accusing the decedent of having received an additional \$10,000 on the side from the seller, and demanding half of that amount. No response to this letter appears in the record. Almost two years later, the decedent's attorney sent a letter to Whitney regarding the transfer of title to other property the couple had owned. Whitney sent a handwritten note back to the decedent's attorney, asking again about the \$10,000 amount she believed the decedent had received "on the side" from the sale of the medical office complex. The decedent's attorney wrote back in June 2003, saying that Whitney's attorney had been informed that the decedent had not received any additional money from the sale.

The decedent's date of death was July 24, 2005. In November 2005, Whitney filed a creditor's claim against the decedent's estate. The amount claimed was \$34,237.25, consisting of \$7,563 for office equipment, \$4,500 for accounts

receivable, \$800 for attorney fees connected with the sale of the office building, \$10,000 for the value of her share of the gold coins, and \$1,374.25 for the cost of two appraisals. Respondent Alice King, acting as the personal representative of the decedent's estate, rejected the claim.

Whitney then filed a civil action against King for declaratory relief and damages. King demurred to the complaint, arguing the proper procedure was to substitute her in as a party to the marriage dissolution action. The parties eventually stipulated to consolidate the probate matter and the civil action, and treat them as if they were a summary determination in probate court. They agreed to have the matter heard "under the expedited process of the probate code[,]" and to abide by the probate rules.

Only Whitney and King testified at the contested hearing. Whitney testified she had received only \$1,000 for the office equipment and nothing for the gold coins. When asked whether she had received any more than \$19,500 for the accounts receivable, she replied, "Not that I recall." When asked why she had not been paid in full upon the sale of the office building, she replied that she and the decedent had been trying to sell the office building for at least three years, and that she "finally just gave in[.]"

On cross examination, she stated she could not remember whether she received some payments for accounts receivable prior to the sale of the medical building. She also stated she had accompanied her daughter to the office on the day of the

funeral, and that her daughter had taken some equipment and furnishings, but that "it was no big deal." When asked why she did not demand the decedent pay her in full what was owed her for the dissolution upon the sale of the office building, she replied, "[b]ecause he would not have agreed, and this would have been shelved for another five years."

In examining King, Whitney's attorney attempted to establish that King had not filed an answer to the complaint. The questions prompted a relevance objection, whereupon Whitney's counsel argued that pursuant to Code of Civil Procedure section 431.20, the material allegations of the complaint must be deemed true, no answer having been filed.

The court replied that no answer was required because the parties had agreed to treat the matter as a creditor's claim in the probate estate. Whitney's counsel stated, "Your recollection is the most important, your Honor. So I'm going to defer to that. But taking it up in the probate litigation doesn't mean that one doesn't file an answer. It just means it's done in the probate action as opposed to a separate civil action But if that's the Court's recollection, I'll yield and defer to that and not ask any further questions."

The court responded that it understood, "that this matter was going to be resolved under the probate court rules. It was not going to be under a civil cause of action. So let's proceed accordingly."

The probate court issued a written decision on contested issues. The court noted that the issues for determination were

limited to any amounts Whitney was owed for office equipment, accounts receivable, and the gold coins. The court concluded Whitney had failed to provide sufficient evidence to prevail on her claim. The court stated that in making its finding, it looked to the "actions surrounding the sale of the medical complex and the distribution of the proceeds of that sale as compelling evidence that all monies due her were provided to her notwithstanding her recollections at trial." The court opined that since Whitney raised an issue regarding the \$10,000 she perceived the decedent had unfairly received from the escrow of the office building, and since there was a distribution to her for equipment, accounts receivable, and attorney fees, it was reasonable to conclude all amounts due her under the dissolution judgment were resolved with the sale of the office building, there having been sufficient sums in escrow to pay such amounts.

The probate court was troubled by what it incorrectly perceived as Whitney's receipt of twice the amount from the sale of the office building as the amount agreed upon in the escrow instructions. The court stated:

"At the close of the escrow, Shirley Whitney received monies for medical equipment and fixtures, accounts receivable and attorney's fees. In addition, she received twice the amount agreed upon for her re-imbursement (\$22,300.00) than did Mark Whitney. No explanation was offered at trial by either party as to this money and what it represented. Were the court to make a speculative decision on this money, the court would probably find that it was in the nature of an equalization payment however, the court has no information to make that

call and only raises the issue as a further reason to deny the application for reimbursement from the estate."

In fact, because the amount Whitney received over and above her one-half share of the proceeds (\$22,300) was subtracted from the decedent's one-half share of the proceeds, the difference between the amounts each received was double the amount to which Whitney was entitled and was paid for reimbursement. The office building sold for \$205,000. The sellers, i.e., Whitney and decedent, paid escrow expenses of \$1,266.27, leaving proceeds of \$203,733.73. One half of this amount was \$101,866.86. The decedent paid Whitney \$22,300 out of his one-half share, leaving him with \$79,566.86. Whitney received this additional \$22,300 in addition to her one-half share of \$101,866.86, making her total payout \$124,166.87 (rounded up to the nearest cent). Thus, even though Whitney received \$44,600 more than the decedent, that was only because the \$22,300 she received came from the decedent's share. The court speculated this additional amount (which was not in fact additional) was in the nature of an equalization payment. While the court did not rely on this, it cited it as "a further reason to deny the application for reimbursement from the estate."

The court also stated in its decision:

"On cross examination, Shirley Whitney 'believed' that she had never received any other monies due her 'that she could recall'. She reiterated that she had worked in the business and had written herself checks out of the business for accounts receivable but had no recollection as to time, date or amounts."

This statement was apparently based on the following testimony:

“Q.[by counsel for King] And your testimony is you received nothing prior to the sale of the medical building for accounts receivable?

A. Not that I remember.

Q. But there might have been some payments, you don't recall then? Is it possible?

A. I don't know.

Q. Okay. Do you recall writing yourself checks out of the company account for accounts receivable?

A. Um, I don't recall, but I could look it up.

Q. Okay. Well again, Jan Holland has acknowledged that you wrote yourself some checks for accounts receivable?

A. I don't think she was involved in the accounting.

Q. But you would have to look it up, you might have been paid some accounts receivable?

A. I don't know. I'd have to look it up, just to be sure. I don't want to say something and not have it be true.”

While Whitney's failure to recall whether she had written herself checks for accounts receivable may be viewed as a tacit admission that she did write some checks on the business account, it was not affirmative evidence that she wrote herself checks for accounts receivable. Jan Holland did not testify at the hearing.

DISCUSSION

The probate court found that Whitney "failed to provide sufficient evidence to prevail under the creditor's claim or the action against the personal representative." The court explained:

"[S]ince an issue was raised by Shirley Whitney on the \$10,000.00 outside of escrow allegedly received by Mark Whitney and [since] there was a distribution to her for equipment, accounts receivable and attorney's fees, . . . were any other sums due her under the dissolution judgment, and since there were sufficient sums in the escrow account to pay those sums, . . . it would be reasonable to assume that all amounts allegedly due would have been resolved in the escrow from the sale of the medical complex."

The basis of Whitney's argument on appeal is that there was insufficient evidence to support the trial court's finding that she had failed to establish a claim on the estate. In establishing a claim upon the estate, the burden was on Whitney to establish the claim's validity by a preponderance of the evidence. (*Estate of Thee* (1946) 75 Cal.App.2d 308, 309.)

Whether Whitney's claims against the estate were proven was a question of fact for the probate court. We review the court's resolution of factual issues for substantial evidence, and the power of this court "begins and ends with the determination whether there is any substantial evidence, contradicted or not, which supports the finding." (*Estate of D'India* (1976) 63 Cal.App.3d 942, 950.) The substantial evidence standard is well settled. "In reviewing the evidence on . . . appeal all

conflicts must be resolved in favor of the [prevailing party], and all legitimate and reasonable inferences indulged in to uphold the [finding] if possible. It is an elementary, but often overlooked principle of law, that when a [finding] is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the [finding]. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court." (*Crawford v. Southern Pac. Co.* (1935) 3 Cal.2d 427, 429.)

Here, the trial court drew an inference that the decedent and Whitney agreed that Whitney's one-half interest in the accounts receivable, office equipment, and gold coins, would be satisfied by a payment of \$22,300 to Whitney from the sale of the office building. This inference was drawn from the fact that the escrow instructions directed that Whitney receive a specified amount for fixtures and equipment, accounts receivable, and attorney fees, and from the fact that this amount was less than Whitney claimed was owed her, even though the decedent received sufficient funds from the sale to pay the entire amount Whitney claimed. The trial court inferred from this that all amounts due Whitney were resolved in the escrow from the sale of the office building. It was reasonable for the court to infer that if Whitney had been owed an additional

amount, a greater amount of the decedent's proceeds of sale would have been paid to her.

The probate court also relied on the fact that Whitney's attorney wrote a letter shortly after the sale demanding one-half of an amount Whitney believed the decedent had received without her knowledge. The court reasonably inferred that if Whitney believed she was owed more, she would have demanded the entire amount, and that if she thought there were other sums owed, she would have demanded those at the time.

Finally, Whitney's inability to recall whether she had written herself checks for the accounts receivable led the probate court to question her credibility as a witness. The credibility of a witness is a matter for the trier of fact to resolve. (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204 (*Beck Development*).)

Citing her own testimony as the sole evidentiary basis, Whitney argues the evidence was uncontradicted that the \$20,500 payment she received from escrow (\$22,300 less \$1,800 for attorney fees) was only a partial payment, and that she did not agree that this amount would satisfy her claim. She argues that given this clear, positive, and uncontradicted evidence, the trial court could not draw an inference that the payment satisfied her claim. However, the trier of fact may reject the testimony of a witness even though the witness is uncontradicted, provided it has a rational ground for doing so. (*Beck Development, supra*, 44 Cal.App.4th at p. 1204.) Where

uncontradicted testimony is rejected by the trial court, it may not be credited on appeal unless it is clear, positive, and of such a nature that it rationally cannot be disbelieved. (*In re Adoption of Arthur M.* (2007) 149 Cal.App.4th 704, 717.)

In this case, it is apparent the trial court disbelieved Whitney because of her inability to remember or unwillingness to state whether she had been paid any sums in satisfaction of her claim in addition to the sums received from the sale of the office building. Additionally, the trier of fact is entitled to consider a witness's bias, interest, or other motive in determining credibility. (Evid. Code, § 780, subd. (f).) These provided rational grounds for disbelieving Whitney's testimony.

Whitney argues that all of the material allegations in her complaint should have been deemed true because King did not file an answer. She is mistaken. Whitney filed both a creditor's claim in the probate proceeding (case no. 6263) and a separate complaint against King for declaratory relief and damages (case no. 27877). King demurred to the complaint. The hearing on the demurrer was continued, and the parties eventually agreed to consolidate the two matters and stipulated that the probate commissioner could hear both matters.

The parties agreed on the record in open court to consolidate the actions and have the complaint "heard under the expedited process of the [P]robate [C]ode[,]" and "have it heard under the Probate Code procedures in front of this [the probate] court[.]" King's attorney represented to the court, without

objection, that the matter would be consolidated in probate court "just on the probate rules[.]"

Probate Code section 9620 provides that in a dispute between the personal representative of an estate and a third person, the parties may enter into a written agreement "to refer the dispute to a temporary judge designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The temporary judge shall proceed promptly to hear and determine the matter in controversy by summary procedure, without pleadings or discovery." Whitney argues Probate Code section 9620 does not apply because the parties had no agreement in writing. However, when the parties enter into a stipulation in open court that is entered in the minutes of the court, it is a sufficient agreement in writing. (*Preiss v. Good Samaritan Hospital* (1959) 171 Cal.App.2d 559, 562.)

Here, as reflected in the court's minutes and the reporter's transcript of the proceedings, the parties agreed to have Judge Pro Tem Twede hear the matter by summary determination in the probate court under probate rules. Therefore, no answer was required to be filed, and no material facts were admitted as a result of the failure to file an answer.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

RAYE, J.

BUTZ, J.